

V. REMARKS

Entry of the Amendment is proper under 37 C.F.R. §1.116 because the Amendment: a) places the application in condition for allowance for the reasons discussed herein; b) does not raise any new issue requiring further search and/or consideration because the Amendment amplifies issues previously discussed throughout prosecution; c) does not present any additional claims without canceling a corresponding number of finally rejected claims; and d) places the application in better form for appeal, should an Appeal be necessary. The Amendment is necessary and was not earlier presented because it is made in response to arguments raised in the final rejection. The amendments to the subject claims do not incorporate any new subject matter into the claims. Thus, entry of the Amendment is respectfully requested.

Claim 1 is objected to because of an informality. The claim is amended to obviate the objection. Withdrawal of the objection is respectfully requested.

Claim 1 is rejected under 35 U.S.C. 102(a) as anticipated by WO 2004/63044. The rejection is respectfully traversed.

Under 35 U.S.C. §102, it states:

A person shall be entitled to a patent unless

(a) the invention was ... patented or described in a printed publication in this or a foreign country before the invention thereof by the applicant for a patent.

It is respectfully submitted that the rejection is improper because the invention in WO 2004/63044 was not patented or described in a printed publication before the invention date of the present invention. The critical dates relative to §102(a) rejection are as follows:

WO 2004/63044:

Publication Date: July 29, 2004

Present Invention:

U.S. Filing Date: September 10, 2003

Date of Invention: September 10, 2003 or before

The issue is the invention date of the present invention relative to the publication date of the applied art. On Page 5, Paragraph 9, the Office Action indicates that WO 2004/63044 was filed, not published, on January 14, 2003.

In Mahurkar v. C.R. Bard, Inc., 79 F.3d. 1572, 38 USPQ2d 1288, 1290 (Fed. Cir. 1996), the Court ruled:

In ex parte patent prosecution, an Examiner may refer to a document **published** within one year before the filing date of a patent application as prior art. However, this label only applies until the inventor comes forward with evidence showing an earlier date of invention. Once the inventor shows an earlier date of invention, the document is no longer prior art under section 102(a). Any suggestion that a document is prior art because it appears before the filing date of a patent ignores the requirements of section the 102 (a). Section 102 (a) explicitly refers to invention dates, not filing dates. Thus, under section 102 (a), a document is prior art only when published before the invention date.

The Office Action does **not** refer to a document **published** within one year before the filing date of a patent application but, in fact, refers to the filing date of the document, particularly January 14, 2003. Further, the date of invention of the present invention is at least September 10, 2003, the U. S. filing date. The publication date of WO 2004/63044 is July 29, 2004, and not January 14, 2003.

January 14, 2003, as mentioned above, is the filing date of WO 2004/63044. The date of invention of the present invention i.e., September 10, 2003, precedes the publication date i.e., July 29, 2004, of WO 2004/63044. Thus, it is respectfully submitted that the prior art invention that was described in a printed publication in a foreign country did not occur before the invention date of the present invention. Thus, it is respectfully submitted that WO 2004/63044 cannot be applied to the present invention as a basis for the rejection.

Withdrawal of the rejection is respectfully requested.

Claims 2 and 4 are rejected under 35 U.S.C. 102(b) as anticipated by Walker (U.S. Patent No. 4,007,851). The rejection is respectfully traversed.

Walker discloses a cap of the type having a shell with integral top and side walls, a knurl region adjacent to the top wall, and with threads provided on the side wall for engagement with the threaded neck of a bottle to contain pressurized fluids. The threads are limited to about 1.25 turns. The cap includes venting openings in the side wall contiguous to the knurl region for releasing the pressure within the closure sufficiently to prevent missiling of the cap when the closure is initially turned to unthread it from the bottle.

Claim 2, as amended, is directed to a metal cap for a container with the metal cap having an upper outer perimeter, a lower outer perimeter and a knurl part with slits, the knurl part formed between the upper outer perimeter and the lower outer perimeter with the slits disposed adjacent the upper outer perimeter so as to release outside an inner pressure of the container generated from contents contained therein. Claim 2 recites that the knurl part comprises plural of knurls having slits disposed adjacent the upper outer perimeter and at least one communicating slit disposed adjacent the upper outer perimeter is formed in a gap between the adjacent knurls communicating the adjacent slits to form a long width slit.

It is respectfully submitted that the rejection is improper because the applied art fails to teach each element of claim 2. Specifically, it is respectfully submitted that the applied art fails to teach a knurl part comprising plural of knurls having slits disposed adjacent an upper outer perimeter and at least one communicating slit disposed adjacent the upper outer perimeter. By contrast, Walker teaches slits 48 formed in a groove 20. The groove 20 is comparable to the claimed lower outer perimeter. And thus, Walker fails to show slits disposed adjacent an upper outer perimeter as now recited in claim 2. As a result, it is respectfully submitted that claim 2 is allowable over the applied art.

Claim 4 depends from claim 4 and includes all of the features of claim 2. Thus, it is respectfully submitted that claim 4 is allowable at least for the reason claim 2 is allowable as well as for the features it recites.

Withdrawal of the rejection is respectfully requested.

Claims 5-7 are rejected under 35 U.S.C. 102(b) as anticipated by JP 5-65151 or JP 2002-211603 or JP 2003-72798 or JP 2004-217295 or JP 2004-175388. The rejection is respectfully traversed.

Claim 5, as amended, is directed to a metal cap having a top part and a side part connected to and extending peripherally around the top part to form a generally cylindrically shaped cavity with a packing disposed in the cavity and contacting the top part and an upper portion of the side part adjacent the top part. Claim 5 recites that the metal cap is threadably engaged onto a mouth portion of a container such that a rim defining a mouth of the container engages an outer peripheral portion of the packing so as to seal pressurized contents of the container contained therein to a predetermined pressure. Claim 5 also recites that the metal cap includes a plurality of knurls formed on and about the side part with at least one knurl formed with a slit extending through the side part adjacent the upper portion thereof and disposed apart from the packing and with the slit sized in a manner such that, when an internal pressure of the container exceeds the predetermined pressure, a part of the upper portion of the metal cap adjacent and partially defining the slit deforms by an amount sufficient to cause

disengagement between a section of the packing and a section of the rim thereby relieving a portion of the internal pressure exceeding the predetermined pressure.

It is respectfully submitted that the rejection is improper because the applied art fails to teach each element of claim 5 as amended. Specifically, it is respectfully submitted that the applied art fails to teach at least one knurl formed with a slit extending through a side part adjacent the upper portion thereof and disposed apart from the packing and the slit is sized in a manner such that, when an internal pressure of the container exceeds the predetermined pressure, a part of the upper portion of the metal cap adjacent and partially defining the slit deforms by an amount sufficient to cause disengagement between a section of the packing and a section of the rim thereby relieving a portion of the internal pressure exceeding the predetermined pressure. As a result, it is respectfully submitted that claim 5 is allowable over the applied art.

Claims 6 and 7 depend from claim 5 and include all of the features of claim 5. Thus, it is respectfully submitted that the dependent claims are allowable at least for the reason claim 5 is allowable as well as for the features they recite.

Withdrawal of the rejection is respectfully requested.

Claims 5 and 6 are rejected under 35 U.S.C. 102(b) as anticipated by JP 1-99967. The rejection is respectfully traversed.

It is respectfully submitted that the rejection is improper because the applied art fails to teach each element of claim 5 as discussed immediately above. As a result, it is respectfully submitted that claim 5 is allowable over the applied art.

Claim 6 depends from claim 5 and includes all of the features of claim 5. Thus, it is respectfully submitted that claim 6 is allowable at least for the reason claim 5 is allowable as well as for the features it recites.

Withdrawal of the rejection is respectfully requested.

Claim 3 is rejected under 35 U.S.C. 103(a) as unpatentable over WO 2004/63044 in view of Walker. The rejection is respectfully traversed.

It is respectfully submitted that, for the reasons discussed above, WO 2004/63044 cannot be applied as prior art. Further, claim 3 depends from claim 1 and includes all of the features of claim 1. Thus, it is respectfully submitted that claim 3 is allowable at least for the reason claim 1 is allowable as well as for the features it recites.

Withdrawal of the rejection is respectfully requested.

In view of the foregoing, reconsideration of the application and allowance of the pending claims are respectfully requested. Should the Examiner believe anything further is desirable in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicants' representative at the telephone number listed below.

Should additional fees be necessary in connection with the filing of this paper or if a Petition for Extension of Time is required for timely acceptance of the same, the Commissioner is hereby authorized to charge Deposit Account No. 18-0013 for any such fees and Applicant(s) hereby petition for such extension of time.

Respectfully submitted,

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Enclosure(s): Amendment Transmittal

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